IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 7267 / 2001 (S/S)

Lalit Mohan Pandey …….. Petitioner

Vs.

State of Uttaranchal & others ……. Respondents

Sri Amar Nath Sharma, Advocate for petitioner.
Standing counsel for respondents.

Hon'ble P.C. Pant – J

1. By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has challenged the termination of his services by the Respondent with effect from 16.06.2001, and has sought reinstatement in the service.

2. Brief facts, as narrated in the writ petition, are that the petitioner was appointed as Plantation Watcher on daily wages in the Forest Department of the State and discharged his duties to the satisfaction of all concerned. But Respondent No.2 without assigning any reason orally terminated services of the petitioner with effect from 16.06.2001. It is also alleged in the writ petition that the juniors to the petitioner were retained in service while the petitioner's services were terminated arbitrarily and illegally.

3. A Counter affidavit has been filed on behalf of respondent in which it is stated that petitioner was initially engaged as Fire Watcher on daily wages from 01.04.1998 to 15.06.1998. When the work of fire watching came to an end with the onset of monsoon, the petitioner discontinued the work of his own. Subsequently after over a year on the request of the petitioner and as per requirement, he was engaged as a Plantation Watcher on daily wages in August, 1999. However, the work of

plantation came to an end on 30.01.2001. As such the engagement of petitioner as a daily wager discontinued. The petitioner was once again engaged as Fire Watcher in year 2001 till onset of monsoon and his work stopped with effect from 16.06.2001. It is further stated in counter affidavit that after the fire watcher's work was over due to on set of monsoon, the petitioner could not be accommodated in service again as Plantation Watcher for the reason that Plantation Care Scheme came to the end. As to the Vishnu Dutt Sharma (alleged junior to the petitioner), it is stated in the counter affidavit that he is working as daily wager elsewhere in another plantation scheme where the work is still available and petitioner's claim of parity with said person is not tenable. Lastly it is stated that the petitioner being daily wager, has not right whatsoever to claim regularization in the department.

4. I heard the learned counsel for the parties and perused the affidavit including counter affidavit and rejoinder affidavit alongwith annexures annexed thereto.

5. The short question for consideration before this court is whether the petitioner was wrongly denied continuance in the service as Plantation Watcher in the Forest Department and whether his services were terminated illegally or arbitrarily.

6. Admittedly, the petitioner was engaged on daily wages as Plantation Watcher by the Forest Department of the State. The petitioner has cleverly concealed the fact as to when he was engaged. He has also not disclosed from which date he was continuesly working with the Forest Department. In the circumstances dates when petitioner worked as stated by respondent in the counter affidavit has to be believed. As per counter affidavit initially the

petitioner was engaged as Fire Watcher on daily wages from 01.04.1998 to 15.06.1998. It is also natural for the respondent not to engage anyone on daily wages after onset of monsoon as there is no question of fire in the forest. Respondents have alleged in the counter affidavit that as a Plantation Watcher, the petitioner was engaged on daily wages in August, 1999 and once Plantation Care Scheme came to end, his services discontinued with effect from 30.01.2001 however during summers from 01.04.2001 to 15.06.2001 he was again engaged as Fire Watcher. Again, since after onset of monsoon there was no work of Fire Watcher hence he was disengaged. In reply of these facts contained in para-3 of the counter affidavit, in para-4 of Rejoinder affidavit, the petitioner has stated that other persons Khayali Ram, Veer Bahadur, Ramveer are still working. The new facts in the rejoinder affidavit can not be controverted for the reason that the exchange of affidavits can not go unending. The petitioner should have stated these facts in the writ petition. However, as to Vishnu Dutt Sharma about whom petitioner has alleged in the para-9 in the writ petition that he is still working under plantation scheme, respondents have answered in the counter affidavit by saying that he is in another plantation scheme.

7. Assuming for a movement for the another persons engaged on the daily wages, it does not give any right to petitioner to be engaged on daily wages or to continue in service particularly when he has engaged on temporary kind of work like Fire watching and plantation watching. While the fire watching is seasonal type of work, plantation watching is also a temporary kind of work as once plant grows as tree under a particular scheme, there

remains no necessity to keeping plantation watchers in that particular area.

8. In the above facts and circumstances, this court is of view that since no right of the petitioner has been violated, provisions of Article 226 of Constitution of India do not get attracted. As such the writ petition is liable to be dismissed and is accordingly dismissed. No order as to costs.

Dated: September 29,2004 **(P.C. Pant – J)**

J.K. Jain